

BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

IN THE MATTER OF APPLICATION FOR)
BENEFICIAL WATER USE PERMIT NO.) FINAL ORDER
13,590-g40J BY TURNER COLONY)

The Proposed Findings of Fact, Conclusions of Law and Order, as entered by the Hearing Examiner on June 12, 1980, are hereby adopted as the Final Findings of Fact, Conclusions of Law and Order.

FINAL ORDER

1. Subject to the conditions and limitations listed below, Provisional Permit No. 13,590-g40J is hereby granted to appropriate 2 cubic feet per second or 900 gallons per minute of water, not to exceed 432 acre-feet per annum, to be diverted by means of a well approximately 40 feet deep at a point in the NE1/4 NW1/4 NE1/4 of Section 34, Township 35 North, Range 25 East, M.P.M., and used for new irrigation of 80 acres in the NE1/4 of Section 34 and 80 acres in the NW1/4 of Section 34, both in Township 35 North, Range 25 East, and containing a total of 160 acres, more or less, to be used for irrigation purposes from April 1 to November 15, inclusive, of each year, in Blaine County, Montana.

2. This Provisional Permit is granted subject to any final determination of existing water rights as provided by Montana law.

3. This Permit is granted subject to existing water rights in the source of supply.

4. This Provisional Permit is granted subject to Section 85-2-505, MCA, 1979, which requires that all wells be constructed so that they do not allow water to be wasted, contaminate other water supplies or sources, and that all flowing artesian wells be capped or equipped so that the

1 flow of water may be stopped when not being put to a beneficial use.
2 The final completion of the well shall include an access port of at
3 least 0.50-inch diameter, located so that the static water level in the
4 well may be accurately measured.

5 5. This Provisional Permit is granted subject to the following Big
6 Flat conditions:

- 7 a. The Permittee shall install an adequate flow metering
8 device in order to allow the flow rate and volume of
9 water diverted to be recorded. The Permittee shall
10 keep a written record of the flow rate and volume of all
11 waters diverted including the period of time and shall
12 submit said records to the Department upon request.
- 13 b. All monitoring and measuring of the well in question
4 will be coordinated with and a part of the study of
15 the Big Flat area, which is being undertaken by the
16 Department.
- 17 c. The Permittee shall observe the water level in the well
18 and keep an accurate record of precipitation and the
19 water levels during the irrigation season. Each
20 record shall include water level, method of measurement,
21 date and time of measurement, precipitation to date,
22 quantity of water pumped from the well, and year,
23 month, and day measured. The Permittee shall submit
24 copies of the above records to the Department at the
25 end of each irrigation season. The records will be used
26 to evaluate possible adverse affects to prior and existing
27 water rights and as data to be utilized in the Big Flat
28 ground water study.

6. If it is determined that the Permittee's well does interfere

1 with those existing water rights, the Provisional Permit will be modified
2 so as not to interfere with those rights.

3 7. Plans and specifications for this project, including diversion
4 facilities and the distribution system shall be presented to the Department
5 by the Permittee for approval prior to appropriation of the water granted
6 herein.

7 8. The issuance of this Provisional Permit by the Department in no
8 way reduces the Permittee's liability for damages caused by the Permittee's
9 exercise of this Provisional Permit, nor does the Department in issuing
10 this Provisional Permit in any way acknowledge liability for damage
11 caused by the Permittee's exercise of this Provisional Permit.

12 9. This Provisional Permit allows the Permittee to appropriate up
13 to 900 gallons per minute of water, however, the actual water right
14 perfected will be that amount of water which the Permittee can divert
15 from the well and beneficially use. If the Permittee is not able to
16 appropriate the 900 gallons per minute of water from the single well
17 applied for under this Application and wishes to put in another well or
18 wells, the Permittee must make an Application for change for additional
19 points of diversion with the Department.

20 RECOMMENDATION

21 It is recommended that the Objectors maintain records of their
22 water rights in a manner similar to that required of the Permittee under
23 Condition 5(c) of the Final Order.

24 NOTICE

25 The Hearing Examiner's Final Order may be appealed in accordance
26 with the Montana Administrative Procedures Act by filing a petition in
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1 the appropriate court within thirty (30) days after service of the Final
2 Order.

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4 DATED this 3rd day of July, 1980.

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8 DAVID L. PENGELLY, D.N.R.&C.
9 HEARING EXAMINER
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CASE # 13590

BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

IN THE MATTER OF APPLICATION FOR)
BENEFICIAL WATER USE PERMIT NO.) PROPOSAL FOR DECISION
13,590-g40J BY TURNER COLONY)

Pursuant to the Montana Water Use Act and the Montana Administrative Procedures Act, after due notice, a hearing was held on April 17, 1980, in the American Legion Hall at Turner, Montana, for the purpose of hearing objections to Application for Beneficial Water Use Permit No. 13,590-g40J, David Pengelly, Hearing Examiner, presiding. The hearing was held in conjunction with the hearing on Application for Beneficial Water Use Permit No. 13,589-g40J.

The Applicant, Turner Colony, appeared at the hearing by Peter Hofer, Sr., and Peter Hofer, and presented testimony in support of the Application. The Turner Colony was not represented by legal counsel. No exhibits were introduced supporting the Application.

Six (6) objectors attended the hearing and presented testimony or statements. The Objectors present were Mr. Patrick Kimmel, Mr. Oliver Killam, Mr. Clayton Mejie, Mr. Herman Liese, Mr. Fred Mohar, Jr., and Mrs. Laurence Walker. None of the Objectors were represented by legal counsel. No exhibits were introduced by the Objectors.

Montana Department of Natural Resources and Conservation personnel present at the hearing were Mr. Roger Noble, Geologist; Mr. Bob Larson, Havre Water Rights Bureau Field Office Manager; and Ms. Vicki Woodrow, Hearings Recorder. The Department was not represented by legal counsel. Two (2) exhibits were introduced by the Department, to wit:

Department's Exhibits:

D-1 Copy of aerial photo of Applicant's property showing outline of areas to be irrigated under Application Nos. 13,589-g40J and 13,590-g40J.

D-2 Copy of map showing the general outline of the Big Flat ground water basin; the numbers and locations of permits issued by the Department within this basin; the location of the Applicant's pending Applications; and the location of the Objectors existing rights.

The Department's Exhibits were marked accordingly and received into the record without objections.

SUMMARY OF RECORD

1. On June 20, 1977, the Department received an Application for Beneficial Water Use Permit No. 13,590-g40J by Turner Colony to appropriate 2 cubic feet per second or 900 gallons per minute of water, not to exceed 432 acre-feet per annum. The water is to be diverted by means of a well approximately 40 feet deep at a point in the NW1/4 NW1/4 NE1/4 of Section 34, Township 35 North, Range 25 East, M.P.M., and used for new irrigation on 80 acres in the NE1/4 and 80 acres in the NW1/4 all in said Section 34 and containing a total of 160 acres, more or less. The water is to be used for irrigation purposes from April 1 to November 15, inclusive, of each year, in Blaine County, Montana.

2. On October 5, 12 and 19, 1977, the Department caused to be duly published in the Harlem News, Harlem, Montana, notice of Application for Beneficial Water Use Permit No. 13,590-g40J.

3. Application for Beneficial Water Use No. 13,590-g40J was revised

1 following a check on the point of diversion by Bob Larson. The point of
2 diversion was changed from the NW1/4 NW1/4 NE1/4 of Section 34 to the
3 NE1/4 NW1/4 NE1/4 of Section 34.

4 4. On October 26, 1977, the Department received an objection to
5 the above Application from Mr. and Mrs. Laurence N. Walker.

6 5. On November 17, 1977, the Department received objections to the
7 above Application from Mr. Patrick M. Kimmel, Mr. Fred B. Mohar, Sr.,
8 Mr. Fred Mohar, Jr., Mr. Ordway Rafter, Mr. Herman Liese, Mr. Clayton I.
9 Mejie, and Mr. Oliver A. Killam.

10 6. On July 10, 1979, Mr. Clayton I. Mejie signed a form releasing
11 his objection to the above Application.

12 7. On July 17, 1979, Mr. Herman Liese signed a form releasing his
13 objection to the above Application.

14 8. On September 24, 1979, Mr. Oliver A. Killam signed a form
15 releasing his objection to the above Application.

16 9. On September 29, 1979, Mr. Fred Mohar, Jr., signed a form
17 releasing his objection to the above Application.

18 10. In a letter dated February 27, 1980, Mr. Partick M. Kimmel
19 requested a formal hearing on the above Application.

20 PROPOSED FINDINGS OF FACT

21 For the purposes herein, based upon testimony given at the hearing
22 and infromation contained in the Department's file on this matter, it is
23 found:

24 1. That there are unappropriated waters in the source of supply,
25 the Flaxville Formation, at times when the water can be put to the use
26 proposed by the Applicant.

27 2. That it is not known whether 900 gallons per minute, the amount
28 requested by the Applicant, is available for appropriation.

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1 3. That it is not known whether the 900 gallons per minute requested
2 by the Applicant is available throughout the period during which the
3 Applicant seeks to appropriate that amount.

4 4. That the Objectors to the above Application have valid existing
5 water rights which must be protected.

6 5. That the existing rights of the Objectors have not been adversely
7 affected in the past by the existing irrigation systems in the area.

8 6. That the proposed means of diversion or construction are not
9 adequately known; specifically, no irrigation plan has been submitted.

10 7. That the proposed use of water is a beneficial use.

11 8. That the proposed use of water will not interfere unreasonably
12 with other planned uses or developments for which a permit has been
13 issued or for which water has been reserved.

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15 PROPOSED CONCLUSIONS OF LAW

16 1. Section 85-2-311, MCA, 1979, states that "The department shall
17 issue a permit if:

18 1. there are unappropriated waters in the source of supply:

19 a. at times when the water can be put to the use

20 proposed by the applicant;

21 b. in the amount the applicant seeks to appropriate; and

22 c. throughout the period during which the applicant
23 seeks to appropriate, the amount requested is

24 available;

25 2. the rights of a prior appropriator will not be adversely
26 affected;

27 3. the proposed means of diversion or construction are adequate;

28 4. the proposed use of water is a beneficial use;

1 5. the proposed use will not interfere unreasonably with
2 other planned uses or developments for which a permit
3 has been issued or for which water has been reserved; . . ."

4 2. Section 85-2-312, (1), MCA, 1979, states in part, "The department
5 may require modification of plans and specifications for the appropriation
6 or related diversion or construction. It may issue a permit subject to
7 terms, conditions, restrictions and limitations it considers necessary
8 to protect the rights of other appropriators, and it may issue temporary
9 or seasonal permits. A permit shall be issued subject to existing
10 rights and any final determination of those rights made under this
11 chapter."

12 3. It is concluded that there are unappropriated waters in the
13 source of supply at times when the water can be put to the use proposed
14 by the Applicant.

15 4. It is concluded that the amount of water available for appropriation
16 and the period of time that that amount is available is not known.
17 Therefore it is concluded that the Proposed Order should be conditioned
18 to grant the Applicant only that amount of water which is available and
19 can be put to beneficial use.

20 5. It is concluded that the rights of prior appropriators will not
21 be adversely affected; subject to certain conditions in the Proposed
22 Order.

23 6. It is concluded that the proposed means of diversion or construction
24 are adequate; subject to certain conditions in the Proposed Order.

25 7. It is concluded that the proposed use of water is a beneficial
26 use.

27 8. It is concluded that the proposed use will not interfere unreasonably
28 with other planned uses or developments for which a permit has been
 issued or for which water has been reserved.

1 9. Nothing decided herein has bearing on the status of water
2 rights claimed by the Applicant other than those herein applied for, nor
3 does anything decided herein have bearing on the status of claimed
4 rights of any other party except in relation to those rights herein
5 applied for, to the extent necessary to reach a conclusion herein.

6 Based on the above Proposed Findings of Fact and Proposed Conclusions
7 of Law, the following Proposed Order is hereby made:

8
9 PROPOSED ORDER

10 1. Subject to the conditions and limitations listed below, Provisional
11 Permit No. 13,590-g40J is hereby granted to appropriate 2 cubic feet per
12 second or 900 gallons per minute of water, not to exceed 432 acre-feet
13 per annum, to be diverted by means of a well approximately 40 feet deep
14 at a point in the NE1/4 NW1/4 NE1/4 of Section 34, Township 35 North,
15 Range 25 East, M.P.M., and used for new irrigation of 80 acres in the
16 NE1/4 of Section 34 and 80 acres in the NW1/4 of Section 34, both in
17 Township 35 North, Range 25 East, and containing a total of 160 acres,
18 more or less, to be used for irrigation purposes from April 1 to November
19 15, inclusive, of each year, in Blaine County, Montana.

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21 of existing water rights as provided by Montana law.

22 3. This Permit is granted subject to existing water rights in the
23 source of supply.

24 4. This Provisional Permit is granted subject to Section 85-2-505,
25 MCA, 1979, which requires that all wells be constructed so that they do
26 not allow water to be wasted, contaminate other water supplies or sources,
27 and that all flowing artesian wells be capped or equipped so that the
28 flow of water may be stopped when not being put to a beneficial use.

1 The final completion of the well shall include an access port of at
2 least 0.50-inch diameter, located so that the static water level in the
3 well may be accurately measured.

4 5. This Provisional Permit is granted subject to the following Big
5 Flat conditions:

- 6 a. The Permittee shall install an adequate flow metering
7 device in order to allow the flow rate and volume of
8 water diverted to be recorded. The Permittee shall
9 keep a written record of the flow rate and volume of all
10 waters diverted including the period of time and shall
11 submit said records to the Department upon request.
- 12 b. All monitoring and measuring of the well in question
13 will be coordinated with and a part of the study of
14 the Big Flat area, which is being undertaken by the
15 Department.
- 16 c. The Permittee shall observe the water level in the well
17 and keep an accurate record of precipitation and the
18 water levels during the irrigation season. Each
19 record shall include water level, method of measurement,
20 date and time of measurement, precipitation to date,
21 quantity of water pumped from the well, and year,
22 month, and day measured. The Permittee shall submit
23 copies of the above records to the Department at the
24 end of each irrigation season. The records will be used
25 to evaluate possible adverse affects to prior and existing
26 water rights and as data to be utilized in the Big Flat
27 ground water study.

28 6. If it is determined that the Permittee's well does interfere

1 with those existing water rights, the Provisional Permit will be modified
2 so as not to interfere with those rights.

3 7. Plans and specifications for this project, including diversion
4 facilities and the distribution system shall be presented to the Department
5 by the Permittee for approval prior to appropriation of the water granted
6 herein.

7 8. The issuance of this Provisional Permit by the Department in no
8 way reduces the Permittee's liability for damages caused by the Permittee's
9 exercise of this Provisional Permit, nor does the Department in issuing
10 this Provisional Permit in any way acknowledge liability for damage
11 caused by the Permittee's exercise of this Provisional Permit.

12 9. This Provisional Permit allows the Permittee to appropriate up
13 to 900 gallons per minute of water, however, the actual water right
14 perfected will be that amount of water which the Permittee can divert
15 from the well and beneficially use. If the Permittee is not able to
16 appropriate the 900 gallons per minute of water from the single well
17 applied for under this Application and wishes to put in another well or
18 wells, the Permittee must make an Application for change for additional
19 points of diversion with the Department.

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21 RECOMMENDATION

22 It is recommended that the Objectors maintain records of their
23 water rights in a manner similar to that required of the Permittee under
24 Condition 5(c) of the Proposed Order.

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26 NOTICE

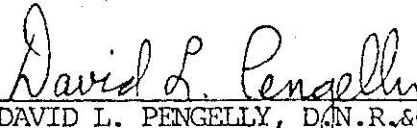
27 This Proposed Order is offered for the review and comment of all
28 parties of record. The review and comment period shall commence with

1 the service of this Proposed Order and shall end ten (10) days thereafter.
2 No extensions of time for comment will be granted.

3 The Final Order in this matter will be sent to all parties by
4 certified mail.

5 The Hearing Examiner's Final Order may be appealed in accordance
6 with the Montana Administrative Procedures Act by filing a petition in
7 the appropriate court within thirty (30) days after service of the Final
8 Order.

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10 DATED this 12th day of June, 1980.

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13 DAVID L. PENGELLY, D.N.R.&C.
14 HEARING EXAMINER
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